

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X	Docket#
UNITED STATES OF AMERICA,	: 04-cr-140 (FB)
- versus -	: U.S. Courthouse
	: Brooklyn, New York
GERARDO FLORES CARRETO,	:
Defendant	: March 2, 2006
-----X	

TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING  
BEFORE THE HONORABLE FREDERIC BLOCK  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government:

Roslynn R. Mauskopf, Esq.  
United States Attorney

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ DCI 01 2007 ★

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1 THE CLERK: Criminal Cause for Sentencing,  
2 United States of America v. Jose Carreto and Gerardo  
3 Carreto.

4 At this time, I would ask the previously sworn  
5 court certified Spanish interpreter, if you could state  
6 your appearance for the record.

7 THE INTERPRETER: Rosa Olivera.  
8 (INTERPRETER PREVIOUSLY SWORN)

9 THE CLERK: And I would ask counsel if you  
10 could please state your appearances for the record.

11 MS. RYAN: Monica Ryan for the United States.

12 MS. AXUM: And Hillary Axum (phonetic) for the  
13 United States, your Honor.

14 Good morning.

15 MR. KULCSAR: Roy Kulcsar for Jose Carreto.

16 Good morning, your Honor.

17 MR. Musa-OBREGON: Your Honor, on behalf of  
18 Gerardo Carreto, Michael Musa-Obregon.

19 Good morning, your Honor.

20 THE COURT: Now we're here to talk about we're  
21 going to be completing this sentence or when we are going  
22 to be completing the sentence. Actually, we haven't even  
23 started the sentence. And I know I have requests for  
24 adjournments which I am going to grant and we will fix a  
25 date for the sentence. And apparently, in consultation

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1 with the lawyers, there's an agreement that you wish the  
2 Court to adjourn the sentencing to some date in April.  
3 Which date is that, Mr Inelli?

4 THE CLERK: After consulting with counsel, we  
5 all agreed on April 27 at 11 a.m.

6 THE COURT: That will be the sentencing date.

7 Now it's good to be here today because since  
8 the defendants are facing considerable amount of time, we  
9 want to make sure that the record is going to be complete  
10 well in advance of the adjourn date. At the present  
11 time, I have no submissions from defendant's counsel and  
12 do you plan to make submissions? Let's hear first from  
13 Mr. Kulcsar.

14 MR. KULCSAR: Your Honor, we have agreed on a  
15 tentative submission schedule. As your Honor knows, at  
16 the time that the plea was taken, I was not counsel for -  
17 -

18 THE COURT: Just answer my question.

19 MR. KULCSAR: Okay.

20 THE COURT: Do you plan to make any submissions  
21 on behalf of your client to the Court for sentencing  
22 purposes; yes or no?

23 MR. KULCSAR: Yes.

24 THE COURT: Yes. The answer is yes. The  
25 answer is yes for you, as well --

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1 MR. MUSA-OBREGON: Yes, extensively,  
2 your Honor.

3 THE COURT: -- Senor Musa-Obregon?

4 MR. MUSA-OBREGON: Yes, I plan to.

5 THE COURT: Now obviously if these submissions  
6 are going to be made a day or two before the date for  
7 sentencing, it's going to be difficult for the Court to  
8 bring them proper attention as well as for the  
9 government. So we should fix a date now when those  
10 submissions are going to be made. And I would think that  
11 at least ten days prior to the sentencing -- may be two  
12 weeks prior, so the government has an ample opportunity  
13 to respond. So two weeks prior to the date of sentencing  
14 would bring us to what date, Mr. Inelli? April what?

15 MS. RYAN: Two weeks before the date is April  
16 13, Judge.

17 THE COURT: April 13. What day is that?

18 MS. RYAN: That's a Thursday.

19 THE COURT: All right. April 13, I am to be in  
20 receipt of whatever submissions you have. And the  
21 government can respond by the following week. I suspect  
22 that would be sufficient time for you. That will be by  
23 April 20.

24 MS. RYAN: That's fine. Thank you, Judge.

25 THE COURT: Now while we are here, can you give

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1 me a little bit of a preview of what it is you plan to  
2 submit? Are you going to oppose any of the calculations  
3 in the presentence report? And are you going to request  
4 a hearing in respect to any of those calculations? Do  
5 you have any thoughts on that now; Mr. Kulcsar, first  
6 you? First you, Mr. Kulcsar.

7 MR. KULCSAR: Oh.

8 THE COURT: First you.

9 MR. KULCSAR: Your Honor, the reason I was  
10 addressing Mr. Ryan, I just received the -- obtained the  
11 minutes from the sentencing yesterday and I've discussed  
12 with Ms. Ryan -- because the enhancements that are --

13 THE COURT: You never got the sentencing -- you  
14 never got the presentence report --

15 MR. KULCSAR: I have the presentence report --

16 THE COURT: -- until yesterday?

17 MR. KULCSAR: -- so I know what the  
18 enhancements are but the question was whether or not they  
19 were covered by the allocution. So that's --

20 THE COURT: Well I don't know whether the  
21 allocution covered every particular aspect of it. I  
22 would have to review it. Probably not --

23 MS. RYAN: Your Honor, I can -- if the Court  
24 might remember, we had extensive negotiations the morning  
25 of the plea with --

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1 THE COURT: Right.

2 MS. RYAN: -- counsel at the time. And each  
3 defendant made fairly lengthy statement that covered what  
4 the government deemed would be adequate to support the  
5 enhancements that are now in the presentence report.

6 THE COURT: Well I will take a look at it. You  
7 don't think that there's any issue of fact that possibly  
8 can serve as the basis of the so-called Fatico hearing in  
9 light of the allocutions.

10 MS. RYAN: I do not. However, I would like to  
11 be advised of that. Obviously, the government would need  
12 to have time to prepare for a hearing.

13 THE COURT: All right. Both counsel will  
14 forthwith advise the Court by next week whether you  
15 believe that a hearing is necessary in respect to any of  
16 the calculations. And if you don't take any exception to  
17 them, we don't have to spend hours at the time of  
18 sentencing going through the many, many, many counts and  
19 subcounts, acts, et cetera, et cetera.

20 So advise me of that by next week at this time  
21 and then you can make your submissions thereafter under  
22 Booker and FanFan of any factors or circumstances under  
23 the factors set forth under 3553(a) you wish me to  
24 consider in deciding on what a reasonable sentence would  
25 be. And then the government can respond to that. Does

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1 that about make things clear and simple? All right.  
2 Because I suspect that you are going to advise me, of  
3 course, that's for you to determine, that you don't wish  
4 to have any factual hearings here and that you do agree  
5 with the calculations that are made and that you don't  
6 have any issue with the underlying facts that support  
7 those calculations. And I want the answer to that by  
8 next week. Okay?

9 MR. KULCSAR: And we'll --

10 THE COURT: If you do take issue, then we'll  
11 have to consider whether to have a hearing and, of  
12 course, you know, you will advise your clients as to what  
13 the pros and cons are of any such hearing; okay?

14 MR. KULCSAR: Your Honor?

15 THE COURT: Are we clear now about that?

16 MR. MUSA-OBREGON: Right.

17 MR. KULCSAR: Yes.

18 THE COURT: Go ahead. What do you wish to say?

19 MR. MUSA-OBREGON: Might I just have one  
20 inquiry? Based on my conversation with Ms. Ryan, there  
21 may -- I believe there may be people testifying at a  
22 victim -- for a victim impact statement.

23 THE COURT: A little louder please, so I can  
24 hear you well.

25 MR. KULCSAR: Yes, sir. I believe the

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1 government may seek to have a victim impact statement  
2 made live in the next --

3 THE COURT: The victims apparently will be here  
4 on April 22.

5 MS. RYAN: Your Honor, it's entirely up to the  
6 victims themselves. They have been made as were required  
7 to by law, been made aware of the dates that the Court  
8 appearances in case --

9 THE COURT: It's up to them whether they'll  
10 come.

11 MS. RYAN: -- and if they decide to speak and  
12 come, they have that right. But I have that --

13 THE COURT: I have their statements in the  
14 presentence report already.

15 MS. RYAN: That's right, Judge.

16 THE COURT: They have a right to orally address  
17 the Court. I thought that possibly they could even do  
18 that today but apparently the government's preference is  
19 to have it all done at the actual date of sentencing.

20 MS. RYAN: That's correct, Judge.

21 THE COURT: All right. Now, what is it that  
22 you wish to say?

23 MR. MUSA-OBREGON: Well I wanted to know  
24 affirmatively whether they were intending to come or not.

25 THE COURT: You will find out on April 22. The

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1 government has just said that they'll have to make that  
2 determination. They haven't made that decision yet. You  
3 have their victim impact statement. And I assume that if  
4 they come and they want to orally read it or whatever it  
5 is, that that's their right to do so.

6 MS. RYAN: Judge, just so the record is clear,  
7 based on Mr. Obregon's use of the word testimony, I just  
8 want to make sure that the Court --

9 THE COURT: It's not testimony.

10 MS. RYAN: Exactly. The victims are not going  
11 to be under oath in answering questions at that time.

12 THE COURT: Of course not. The law gives them  
13 the opportunity to speak and they don't have to be placed  
14 under oath. What else do you wish to inquire today?

15 MR. MUSA-OBREGON: That was also, your Honor.

16 THE COURT: Mr. Kulcsar, are you clear about  
17 everything?

18 MR. KULCSAR: Apparently, your Honor. But I  
19 just want to know whether we can fax that letter to the  
20 Court.

21 THE COURT: Whether you can what? Wondering  
22 what?

23 MR. KULCSAR: The letter about whether or not  
24 we're going to have -- the letter that is required next  
25 week.

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1 THE COURT: I'm sorry, I don't understand you.  
2 Can you repeat yourself? You want to know from me about  
3 what next week?

4 MR. KULCSAR: You said that we should notify  
5 the Court next week --

6 THE COURT: By this time; this is Thursday, by  
7 next Thursday. I just have to know whether or not  
8 there's any need to have any factual hearings. I suspect  
9 the answer will be no but it's for you to make that  
10 determination. That's what you are going to advise the  
11 Court. All right? And then we will take it from there.

12 Anything else? I just thought it would be  
13 useful to have you here because I do plan to go forward  
14 with the sentencing on that date. There will be no  
15 further adjournments barring extraordinary circumstances.  
16 Be prepared; okay? We'll look forward to your  
17 submissions. Thank you very much.

18 MS. RYAN: Thank you very much, your Honor.

19 MR. KULCSAR: Thank you, your Honor.

20 THE CLERK: Thank you, counsel.

21 MR. MUSA-OBREGON: Thank you.

22 THE CLERK: April 27 at 11 a.m.,. Your  
23 submissions by April 13.

24 (Matter concluded)

25 -oOo-